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**FEDERAL ELECTION COMMISSION**

999 E Street, N.W.  
Washington, D.C. 20463

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**SENSITIVE**

**FIRST GENERAL COUNSEL'S REPORT**

MUR 5651

DATE COMPLAINT FILED: 3/21/05

DATE OF NOTIFICATION: 3/22/05

DATE ACTIVATED: 1/3/05

STATUTE OF LIMITATIONS: 11/4/09

**COMPLAINANT:**

Don Sparks

**RESPONDENTS:**

Joseph Gallagher  
Blount County Democratic Party and  
Arnold G. Pesterfield, treasurer

**RELEVANT STATUTES:**

2 U.S.C. § 431(4)(A)

2 U.S.C. § 432(b)

2 U.S.C. § 433

2 U.S.C. § 434

2 U.S.C. § 441a

2 U.S.C. § 441b

**INTERNAL REPORTS CHECKED:**

FEC Database

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

The complaint in this matter alleges that Mr. Joseph Gallagher violated the law by depositing at least five checks made out to the Blount County Democratic Party ("BC Democratic Party") into an account he opened as Blount County Kerry for President ("BC Kerry for President"), and by failing to file disclosure reports. For the reasons set forth below, this Office recommends that the Commission exercise its prosecutorial discretion and dismiss this matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

1    **II.    FACTS**

2            The complainant in this matter asserts that Mr. Joseph Gallagher “opened a  
3    Kerry-Edwards headquarters” in Blount County, Tennessee, before the 2004 general  
4    election where he sold shirts, badges and other things and stated at an open meeting that  
5    he had raised over \$12,000. In what appears to be the crux of the complaint, the  
6    complainant alleges that Mr. Gallagher deposited at least five checks made out to the BC  
7    Democratic Party into an account he opened as BC Kerry for President, and asserts “we  
8    do not know if other checks have been deposited into this account....” The complainant  
9    then asks, “Is there any way we can get [Gallagher] to file a disclosure so that we can see  
10   his records? This is a lot of money and I know that he should have disclosures just as  
11   everyone else is required to do.” The complaint ends, “I hope that you will check into  
12   this matter for our party and the people that thought they were giving money to Kerry.”  
13   In effect, the complaint alleges that BC Kerry for President misdeposited contributions  
14   intended for BC Democratic Party into its own account and that BC Kerry for President  
15   failed to register as a political committee and file disclosure reports with the Commission.

16           In response to the complaint, Mr. Gallagher asserts that he met with both the  
17   complainant and the Executive Committee of the BC Democratic Party, and that both are  
18   “now satisfied with [his] accounting with respect to [the] Blount County Kerry for  
19   President campaign.” Attached to Gallagher’s response is a separate letter from Mr.  
20   Brandon Cook, the Chairman of the BC Democratic Party. Cook explains that Gallagher  
21   was the Chairman of the 2004 BC Kerry for President campaign, which “was an  
22   independent effort but one that had very positive impact towards revitalizing the  
23   Democratic Party in Blount County.” With respect to the checks made out to the BC

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1 Democratic Party that Gallagher deposited into the BC Kerry for President account, Cook  
2 asserts the following: (1) each of the checks was brought to the "Kerry Headquarters;"  
3 (2) Gallagher unintentionally deposited one \$100 check into the BC Kerry for President  
4 account which should have been forwarded to the BC Democratic Party; (3) five other  
5 checks totaling \$145 made out to the "Democratic Party" were intended for the Kerry  
6 campaign; and (4) the total amount in dispute is \$245. Cook further explains that  
7 Gallagher subsequently presented a check to the BC Democratic Party in the amount of  
8 \$865, the balance "in the Kerry account" and also submitted a full accounting of  
9 campaign activities and a full financial disclosure – all of which the Executive  
10 Committee accepted "with a resounding approval and vote of appreciation to Mr.  
11 Gallagher for his efforts in the 2004 campaign." Finally, Cook recommends that the  
12 Commission dismiss the complaint.

13 Attached to Mr. Cook's letter is a sworn and notarized affidavit from the  
14 complainant, which requests that the complaint be withdrawn. The complainant states  
15 that after reviewing Gallagher's records and final report of the BC Kerry for President  
16 campaign and Mr. Cook's letter to the Commission, his previous concerns have been  
17 satisfied.<sup>1</sup>

18 In order to assist the Commission in considering the facts of this matter, by letter  
19 dated January 19, 2006, this Office sought voluntary clarification from Gallagher  
20 regarding two aspects of his response to the complaint. See Attachment 1. Specifically,  
21 Gallagher's response did not address the complaint's allegation that Gallagher stated at a  
22 public meeting that he had raised over \$12,000. Thus, we asked whether he had made

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<sup>1</sup> By letter dated April 28, 2005, this Office advised the complainant that once a complaint is properly filed with the Commission pursuant to 2 U.S.C. § 437g, a request for withdrawal will not prevent the Commission from reviewing the complaint and taking such action as it deems appropriate.

1 such a statement and if so whether it was true. *See* Attachment 1. Further, we sought  
2 clarification with respect to a statement in the Cook letter enclosed with Gallagher's  
3 response – *i.e.*, "Mr. Gallagher was Chairman of the 2004 Blount County Kerry for  
4 President campaign. It was an independent effort." *Id.* We asked what was meant by  
5 "independent," including whether the campaign effort undertaken by Gallagher and BC  
6 Kerry for President was independent of the BC Democratic Party, or independent of  
7 Kerry-Edwards 2004, Inc., the presidential candidate's principal campaign committee, or  
8 both. *Id.*

9 In response, Gallagher confirmed that he "and others interested in electing Mr.  
10 Kerry President did raise \$12,987.98 in Blount County," and that an accounting was  
11 made and filed with the Blount County Election Commission. Attachment 2. This  
12 publicly available document reflects that Gallagher and BC Kerry for President received  
13 \$12,987.98 in "revenues that came from donations," and expended funds for campaign  
14 materials, including yard signs, bumper stickers, T-shirts, buttons, three billboards, and  
15 "media exposure in the Maryville Daily Times." Attachment 3.

16 On the second point, Gallagher's response states, "we cannot speak for the  
17 Chairman of the Blount County Democratic Party's choice of the word 'independent,'"  
18 but "if a full analysis of the facts in this case were warranted, we suspect that they would  
19 show that Mr. Gallagher was originally contacted by the State Headquarters for Kerry  
20 regarding organizing its efforts in Blount County. His efforts overlapped with both the  
21 State and local party leaders, and he was unaware of any requirement that he  
22 independently register with the Federal Election Commission." Attachment 2.

23

1    **III.    LEGAL ANALYSIS**

2            At this point, there is virtually no factual basis for what appears to be the principal  
3    concern set forth in the complaint – *i.e.*, that Mr. Gallagher deposited into BC Kerry for  
4    President five checks that were intended for the BC Democratic Party. Based on the  
5    collective responses of Mr. Gallagher, the BC Democratic Party and the complainant,  
6    which were submitted together, it appears that \$145 of the checks at issue were, in fact,  
7    intended for deposit into the account of BC Kerry for President, and only one \$100 check  
8    was mistakenly deposited into that account. Even if Gallagher's misdeposit of the \$100  
9    check constituted a violation of the Act, this amount of money is so small and the activity  
10   so limited that it would not justify any use of resources by the Commission.<sup>2</sup>

11           The remaining facts of this matter raise the issue of whether BC Kerry for  
12   President is a political committee that should have registered with the Commission and  
13   filed disclosure reports. The Act defines a "political committee" as any committee, club,  
14   association, or other group of persons that receives "contributions" or makes  
15   "expenditures" for the purpose of influencing a federal election which aggregate in  
16   excess of \$1,000 during a calendar year. The term contribution is defined as "any gift,  
17   subscription, loan, advance, or deposit of money or anything of value made by any  
18   person for the purpose of influencing any election for Federal office." 2 U.S.C. §

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<sup>2</sup>        In any event, the fact that BC Kerry for President did not forward the \$100 check to the BC Democratic Party does not appear to constitute a violation of the Act. The Act requires every person who receives a contribution for a "political committee" (within the meaning of 2 U.S.C. § 431(4)), which is not an authorized committee, to forward the contribution to the treasurer of the committee within ten days after receiving the contribution when the amount is greater than \$50. *See* 2 U.S.C. § 432(b)(2). The BC Democratic Party is not registered with the Commission as a "political committee" and this Office's review of the public record did not reveal any information that suggests that the BC Democratic Party received contributions or made expenditures which aggregate in excess of \$1,000 during a calendar year. *See* 2 U.S.C. § 431(4). Thus, the Act's provision governing the timely forwarding of contributions does not appear to apply to the activity in this matter.

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1 431(8)(A)(i). Similarly, the term expenditure is defined as "any purchase, payment  
2 distribution, loan, advance, deposit, or gift of money or anything of value made by any  
3 person for the purpose of influencing any election for Federal office." 2 U.S.C.  
4 § 431(9)(A)(i).

5 According to Mr. Gallagher's responses and the disclosure report he filed with the  
6 Blount County Election Commission, it appears that Mr. Gallagher raised over \$12,000,  
7 deposited the funds in a bank account he opened in the name of BC Kerry for President,  
8 and expended these funds for campaign materials, 3 billboards, and newspaper  
9 advertisements. *See* Attachments 2 and 3. However, it is unclear from the available  
10 information whether BC Kerry for President was an independent group that should have  
11 registered with and reported to the Commission or whether Mr. Gallagher was working  
12 for and on behalf of the Kerry campaign and/or the State or local Democratic party. Mr.  
13 Gallagher's response to this Office's request for clarification failed to resolve this issue.  
14 *See* Attachment 2. Instead, by stating, "we suspect [a full analysis] would show that Mr.  
15 Gallagher was originally contacted by the State Headquarters for Kerry regarding  
16 organizing its efforts in Blount County," Gallagher increases the ambiguity. *Id.* An  
17 investigation would be needed to clarify these facts.

18 In either case, however, investigating this matter would not appear to be a prudent  
19 use of Commission resources. On one hand, if Mr. Gallagher was acting on behalf of  
20 John Kerry's campaign in undertaking the activity described herein, we do not have a  
21 record that suggests a significant violation of the Act may have occurred. The vast  
22 majority of receipts and disbursements of BC Kerry for President were in amounts falling  
23 well below the \$200 itemization threshold, and the accounting Gallagher filed with the

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1 Blount County Election Commission does not include the name of most of the  
2 contributors. See Attachment 3. Thus, we do not have a basis to know whether or not  
3 these receipts and disbursements were in fact included in the total receipts and total  
4 disbursements disclosed by Kerry-Edwards 2004, Inc. in its disclosure reports. In  
5 reviewing the disclosure reports, this Office did not find the few disbursements made by  
6 BC Kerry for President that Kerry-Edwards 2004, Inc. would have been required to  
7 itemize. However, these disbursements totaled only approximately \$3,700, and thus  
8 would not warrant use of additional Commission resources. On the other hand, if this is a  
9 situation much like MUR 5156 ("Muleshoe") -- involving individual activity by private  
10 citizens not familiar with the Commission or its processes and not connected with a  
11 candidate, who used modest resources to express political views and engaged in limited  
12 activity -- the Commission should similarly take no action. See Statement of Reasons of  
13 Commissioner Darryl R. Wold in MUR 5156, dated March 22, 2002.

14 For all these reasons, this Office recommends that the Commission exercise its  
15 prosecutorial discretion and dismiss this matter. See *Heckler v. Chaney*, 470 U.S. 821,  
16 831 (1985) (in determining whether to pursue an enforcement action, an agency "must  
17 not only assess whether a violation has occurred, but whether agency resources are best  
18 spent on this violation or another . . . [and] whether the particular enforcement action  
19 requested best fits the agency's overall policies . . .").


IV. RECOMMENDATIONS

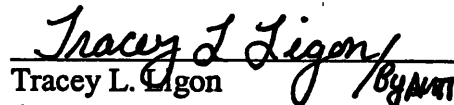
1. Dismiss this matter.
2. Approve the appropriate letters.

Lawrence H. Norton  
General Counsel

Lawrence L. Calvert Jr.  
Deputy Associate General Counsel  
for Enforcement

Date 4/20/06

By:   
Ann Marie Terzaken  
Assistant General Counsel

  
Tracey L. Ligon  
Attorney

Attachments:

1. Letter Requesting Clarification dated January 19, 2006
2. Letter Responding to Clarification Request dated January 27, 2006
3. Final Report of Kerry-Edwards Blount County Campaign  
filed with the Blount County Election Commission

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